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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:19334 of 1999

DATED:31-08-2006

Between:

C.Narasa Raju

..... PETITIONER

AND

1. The Tirumala Tirupathi Devasthanams, rep.by its Executive Officer, Tirupathi, Chittoor District and another.

.....RESPONDENTS

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ORDER:

Aggrieved by the proceedings of the Tirumala Tirupathi Devasthanams, dated 17-08-1999, rejecting his claim for sanction of pension and payment of gratuity, the petitioner has approached this Court.

Facts, in brief, are that the petitioner herein was initially appointed as a Server in the S.V.Arts College Hostel, Tirupathi, on 01-08-1962. He was, thereafter, promoted as an Assistant Cook,

Cook and then a Head Cook. The Tirumala Tirupathi Devasthanams Trust Board, vide resolution No.192 dated 03-06-1991, approved the rules of recruitment, age, qualifications etc for TTD staff, resolved to treat the workers of the S.V.Arts College, S.P.W. Degree College, and S.G.S.Arts College, Tirupathi, hostels as a separate unit, to create 139 posts in the above three hostels, and to regularize the services of the hostel workers already working in the hostels as shown in Annexure-2. The Chief Warden/Warden were empowered, vide proceedings dated 21-06-1991, to appoint employees on a temporary basis, whenever there was need for additional staff to run the hostels, with prior approval of the Hostel Executive Committee of the TTD. Consequent thereto, the Principal and Chief Warden, vide proceedings dated 19-08-1991, absorbed the petitioner on a regular basis in the cadre of Cook with effect from 03-06-1991. The petitioner retired from service on attaining the age of superannuation on 30-06-1996. He filed W.P.No.16035 of 1998 seeking a direction that he be paid gratuity and be sanctioned pensionary benefits. The writ petition was disposed of directing the respondents to consider the petitioner's case for payment of these benefits, and the appeal preferred there against was dismissed by the Division Bench. The TTD, vide proceedings dated 17-08-1999, informed the petitioner that his case for grant of pensionary benefits was examined as per the service rules of the TTD and that he was not entitled for pensionary benefits on the following grounds:

> "1) He has not put up 10 years of minimum qualified services in TTD for getting pensionary benefits.
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> 2) He is not regular employee of TTD under any one of the TTD service rules.
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> 3) Moreover the Management under whose direction the TTDs has to operate service condition of employee did not permit for absorption of workers who are working in the hostel under TTD Management."

Sri P.Ganga Rami Reddy, learned counsel for the petitioner, would contend that since the petitioner was initially appointed as a Server on 01-08-1962, the entire period of service of nearly 34 years is to be reckoned for the purpose of computation of qualifying service, and accordingly, the petitioner would be entitled for pension since he has put in much more than the minimum prescribed qualifying service of ten years. Learned counsel would place reliance on Rule 13 of the A.P. Revised Pension Rules in this regard, and on the judgments of the Rajasthan and Punjab & Haryana High Courts, in **Ismail Khan v. State of Rajasthan and others**[1], **Mrs.Amrit Kaur Malhotra v. Post Graduate Institute of Medical Research Chandigarh and another**[2] **Jagat Prakash Roy Bhatnagar v. The State of Rajasthan & others**[3] and **Joginder Singh v. The State of Haryana and others**[4]. Learned counsel would also place before this Court a copy of the

proceedings of the Executive Officer of the TTD, in Roc.No.D4/38903/DEO/94 dated 27-07-2002, wherein reference is made to the fact that the Board of Trustees of the TTD, in exercise of the powers conferred under Rule 10 of the TTD Service Rules, in its resolution No.192 dated 03-06-1991, had resolved to create 139 posts in the Cadre Strength shown in enclosure-IV, to adopt the rules relating to the method of recruitment, qualifications, age pay-scales etc., and to seek approval of the Government for exemptions, whenever necessary, in the above matter. The said proceedings also refers to the fact that the proposals submitted by the TTD Trust Board, for ratification of its action in creating 139 posts in different categories in TTD Hostels, had been ratified by the Government in G.O.Ms.No.673 dated 12-10-2001 and permission was accorded to absorb services of persons working on N.M.R/Consolidated pay basis with effect from 03-06-1991, and to extend to them all service benefits on par with TTD employees. Basing on the orders of the Government, in G.O.Ms.No.673 dated 12-10-2001, the Executive Officer ordered that the 139 hostel workers, working in the hostels attached to S.V.Arts College, S.P.W.Degree College and S.G.S.Arts College, Tirupati, as shown in the annexure, be absorbed and their services be regularized with effect from 03-06-1991 duly extending all service benefits to the 139 hostel workers in their respective posts, as noted in the annexure, on par with TTD employees duly treating all the hostels as a

separate unit. The annexure, to the said proceedings dated 27-07-2002, gives a list of 139 employees whose services were regularized and absorbed with effect from 03-06-1991. The petitioner stands at Serial No.83 in the said list. It is necessary to note that the petitioner has not chosen to challenge the proceedings of the Principal and Chief Warden, S.V.Arts College, dated 19-08-1991, pursuant to which the petitioner was absorbed as a Cook in the hostel with effect from 03-06-1991. He has also not chosen to challenge the proceedings dated 27-07-2002, where again his services were directed to be absorbed only with effect from 03-06-1991. Since the petitioner was regularized and absorbed as a Cook only with effect from 03-06-1991, under the aforesaid proceedings which have not been challenged before this Court, it is not open for him to turn around and contend that he is entitled to have his services, rendered prior thereto, reckoned for the purpose of payment of gratuity and pension. It is also necessary to note that it was pursuant to the resolution of the TTD Trust Board (resolution No.192 dated 03-06-1991), that 139 posts were created, and it is only after posts are created, that a person can be regularized and absorbed in such posts. The service rendered by the petitioner earlier, even prior to the creation of posts, cannot be reckoned as service rendered in a post.

Rule 13 of the A.P. Revised Pension Rules, 1980, which relates to the commencement of qualifying service, reads thus:--

"**13.Commencement of qualifying service**:--Subject to the provisions of the rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that—

(a) in the case of a Government servant in a Class IV service or post who held a lien or a suspended lien on a permanent personable post prior to the 17th November, 1960, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensating gratuity."

Sri P.Gangarami Reddy, learned counsel for the petitioner, would place emphasis on the fact that even appointment in an officiating or in a temporary capacity has to be reckoned for the purpose of computation of qualifying service for the purpose of pension. Rule 13, would however, show that commencement of qualifying service is from the date he takes charge of the "post" to which he is first appointed. It is only when a person takes charge of the **post** in whatever capacity, (substantively, in an officiating capacity or in a temporary capacity), would he be entitled to have the service rendered in such post reckoned for the purpose of qualifying service. As noted above, the posts themselves were

created only on 03-06-1991 and as such the petitioner cannot be stated to have rendered service in any post prior thereto. It is only after a post is created can an employee's service be regularised. Regularisation of service is only in cases where the appointment is irregular and not when the appointment is illegal. In **Secretary, State of Karnakata v. Umadevi**[5], the Apex Court observed:

> "……In *B.N. Nagarajan* v. *State of Karnataka*[8] this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. **We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.**
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> We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate

cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent……

……By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment **and that appointments to non-available posts should not be taken note of for regularisation**……

It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or

temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

One aspect needs to be clarified. **There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*[1][11], *R.N. Nanjundappa*[2][12] and *B.N. Nagarajan*[8] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment.** In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also

> clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme……"

Now to the judgments relied upon by Sri P.Gangarami Reddy, learned counsel for the petitioner.

In **Ismail Khan**[1]**,** a Single Judge of the Rajasthan High Court held that the right of pension is a right which is inhered in every employee because of his long association. Rule 179 of the Rajasthan Service Rules provided that the services of an officer did not qualify for pension unless it confirmed to the following three conditions:

1) Service must be under the Government;

2) The service may be paid by the Government;

3) The employment may be substantive/permanent/temporary or officiating.

Rule 180 empowered the Government to declare that any specific kind of service or service rendered by the Government servant shall qualify for pension subject to such condition as the Government may think fit to impose. The learned Single Judge held thus:

> "……The period during which the petitioner has worked as a daily wage earner towards a regular work, may be of a temporary nature, cannot be said to be a daily wage earner within the classification of a

> causal labour. I have already discussed earlier that a casual labour means a person who has been appointed towards an unpleasant and unanticipated work for a particular work only. If the work has been anticipated earlier, then the person employed does not fall within the capacity of a causal labour, but may fall within the definition of a temporary labour. Therefore, the protection of Articles 14 and 16 is not available to a causal labour but it is available to be temporary labour and for the this reason because it is not the case of the State Government that he was earning a daily age earner towards an unanticipated work, it is to be presumed that he was a temporary employee during the period during which he was earning daily wages and for this reason also I hold that the period lying between 31-7-67 also falls within the definition of the qualifying service and the petitioner is entitled for the benefits of pension in accordance with the rules. The petitioner's qualifying service shall be considered as qualifying for the purpose of pension from 31-7-64 upto the date of his retirement."

The learned Judge held that while a period, during which the petitioner had worked on daily wages towards regular work may be of a temporary nature he could not be said to be a daily wage worker within the classification of casual labour, since a labourer who had been appointed towards an unpleasant and unanticipated work for a particular work only was a casual labourer and if the work had been anticipated earlier, then the employee did not fall within the category of a casual labourer. The learned Judge held that the period during which the employee was engaged on daily wage basis must also be reckoned for the purpose of qualifying service and that the employee was entitled to the benefits of pension in accordance

with the rules.

As noted above, neither Rule 179 nor Rule 180 of the Rajasthan Service Rules is similar to Rule 13 of the A.P.Revised Pension Rules. Further, in **Ismail Khan**[1] the question as to whether service rendered, even prior to the creation of posts, could be reckoned for the purpose of determining qualifying service in a post did not arise for consideration.

In **Jagat Prakash Roy Bhatnagar**[3] following the judgment in **Ismail Khan**[1]**,** a learned Single Judge of the Rajasthan High Court held that service rendered prior to regularization must also be reckoned and that as per Rule 179, the employee concerned was entitled for payment of gratuity. In **Mrs.Amrit Kaur Malhotra**[2]**,** the petitioner had been appointed as a house keeper in a Government hostel. She was later sent on deputation to the Post Graduate Institute at Chandigarh wherein her services were ultimately absorbed. The Punjab and Haryana High Court held that the service rendered by her in the Government hostel was also required to be reckoned for computation of her pensionary benefits. Reliance was placed on Rule 40 of the Post Graduate Institute of Medical Education and Research Regulations 1967 whereunder for matters which were not provided for under the regulations, the rules as applicable to the Central Government employees would apply. The

Learned Single Judge of the Punjab and Haryana High Court, placing reliance on Rule 13 and 14 of the Central Government Pension Rules and on the Government O.M. dated 21-04-1980, held that the temporary service rendered under the Central Government must also be reckoned for the purpose of computation of pensionary benefits. In **Joginder Singh**[4], services rendered as a daily wage employee were directed to be reckoned for the purpose of computation of pensionary benefits and not merely the service subsequent to regularization.

In none of these judgments did the question, as to whether the services rendered, prior to creation of a post, was required to be reckoned for the purpose of computation of qualifying service in a post, arise for consideration.

In my view Rule 13 of the A.P. Revised Pension Rules which provides for commencement of qualifying service from the date the Government servant takes charge of the "post" would apply only to cases where a post has already been created. In cases where a post is in existence, in whatever manner the Government servant takes charge of the said post, whether substantively or in an officiating or in a temporary capacity, he would be entitled to have his services reckoned from the date he took charge of the "post". A Government servant can take charge of a post only after a post is created and not prior thereto and since the post, in which the

petitioner was absorbed, was created only on 03-06-1991, the petitioner herein was rightly absorbed with effect from that date and he would therefore be entitled only to have his qualifying service reckoned from 03-06-1991 and not prior thereto. Under Rule 45 (2) of the Revised Pension Rules, it is only on completion of ten years of qualifying service would an employee be entitled for pension and since the petitioner has put in just a little more than five years of service, from 03-06-1991 till 31-06-1996, the impugned order rejecting his request for pension cannot be faulted. It is, however, necessary to note that under Rule 45 (1) of the Revised Pension Rules an employee, who has put in even less than ten years of service, is entitled for gratuity. The impugned order is silent as to whether the petitioner was paid gratuity or not. Since under Rule 45 (1), the petitioner is entitled for payment of service gratuity having completed five years of service, in case, he has not already been paid gratuity, the said amount shall be paid to him within a period of two moths from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. However, in the circumstances, without costs.

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31st August, 2006

SKM

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[1] 1986 (3) SLR 678 (Rajasthan HC)

[2] 1987 (1) SLR 341 (Punjab & Haryana HC)

[3] 1997 (5) SLR 484 (Rajasthan HC)

[4] 1997 (7) SLR 51 (Punjab & Haryana HC)

[5] 2006 (4) SCC 1